

FILED  
Clerk  
District Court

OCT 31 2005

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS  
By \_\_\_\_\_  
(Deputy Clerk)

YU SUK CHUNG,

Plaintiff,

vs.

WORLD CORPORATION,

Defendant.

Case No. CV-04-0001

ORDER DENYING PLAINTIFF'S  
MOTION IN LIMINE

THIS MATTER came before the court on Monday, October 31, 2005, for hearing of plaintiff's motion *in limine* to exclude defendant from referring to any evidence related to plaintiff's failure to mitigate damages. Plaintiff appeared personally and by and through his attorneys, Colin Thompson and Robert T. Torres; defendant appeared personally and by and through its attorneys, Matthew Gregory and David Lujan.

THE COURT, having fully considered the written arguments of the plaintiff and the oral arguments of the defendant and plaintiff, denies plaintiff's motion *in limine*.

Plaintiff claims that defendant should be prohibited from setting forth any claim of plaintiff's mitigation of damages as an affirmative defense because defendant failed to plead such affirmative defense in its answer. See Fed. R. Civ. P. 8(c). However, a pretrial order "has the effect of amending the pleadings." In re Hunt v. Hunt, 238 F.3d 1098, 1101 (9th Cir. 2001) (quoting 999 v. C.I.T. Corp., 776 F.2d 886, 871 n.2 (9th Cir. 1985)). The issue of mitigation of damages was properly included in the Jointly Prepared Final Pre-Trial Order 3 - 4 (Oct. 26, 2005) ("Defendant contends that the issues

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2 for trial are as follows: . . . 13. If there are damages, did plaintiff adequately mitigate his damages  
3 by seeking alternative employment or other such conduct?”).

4 ACCORDINGLY, plaintiff’s motion *in limine* is denied.

5 IT IS SO ORDERED.

6 DATED this 31st day of October, 2005.

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9 ALEX R. MUNSON  
10 Judge  
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